

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DARRELL J. MOORE, SR.,

Charging Party,

v.

HOUSING AUTHORITY OF THE CITY OF
LOS ANGELES,

Respondent.

Case No. LA-CE-572-M

PERB Decision No. 2166-M

February 25, 2011

Appearance: Darrell J. Moore, Sr., on his own behalf.

Before Dowdin Calvillo, Chair; McKeag and Wesley, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Darrell J. Moore, Sr. (Moore) of a Board agent's dismissal of his unfair practice charge. The charge alleged that the Housing Authority of the City of Los Angeles (HACLA) violated the Meyers-Milias-Brown Act (MMBA)¹ by refusing to allow Moore to return to his position at HACLA following a medical leave. The Board agent dismissed the charge based in part on timeliness, and on Moore's failure to state a prima facie case that HACLA retaliated against him or interfered with his right to union representation.

The Board has reviewed the dismissal and the record in light of Moore's appeal and the relevant law. Based on this review, the Board affirms the dismissal of the charge for the reasons discussed below.

¹ The MMBA is codified at Government Code section 3500 et seq.

FACTUAL BACKGROUND

In 2002, Moore was hired as an Eligibility Interviewer by HACLA and he worked as a “casual employee” (temporary employee) from 2002 to 2004. In early 2004, Moore was laid off, but shortly thereafter he was rehired to the same position.

On or around March 2005, Moore contends that he became ill due to stress in the workplace. He requested leave from work and was instructed to file worker’s compensation forms prior to taking leave. While on leave, Moore was treated by a HACLA doctor who determined that Moore had a “non-industrial” injury and discharged him with instructions to obtain private treatment. Moore received private medical treatment and appears to have been cleared to return to work in or around early 2006. Before HACLA would permit him to return to work, Moore was required to see its in-house doctor once again. It appears that Moore did not see the HACLA doctor. Moore asserts that HACLA refused to allow him to return to work even though he was “finally released as permanent and stable in May of 2006 to return to work.”

On or around September 2005, Moore applied for unemployment benefits and HACLA appealed the decision to award Moore benefits, contending that Moore was still considered an employee of HACLA.

Moore contends that in “late 2009” he contacted the union for assistance, however it was “to no avail, because HACLA claimed that Moore was not entitled to Union representation because he was a temporary employee.” On November 2, 2009, Moore filed the instant unfair practice charge with PERB, alleging retaliation and interference.

DISCUSSION

Jurisdiction

Moore contends that HACLA retaliated against him by refusing to allow his return to work following a medical leave. PERB is prohibited from issuing a complaint with respect to any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge. (*Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072.) A charging party bears the burden of demonstrating that the charge is timely filed. (*Tehachapi Unified School District* (1993) PERB Decision No. 1024; *State of California (Department of Insurance)* (1997) PERB Decision No. 1197-S.)² The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (*Gavilan Joint Community College District* (1996) PERB Decision No. 1177.) Moore filed the instant unfair practice charge on November 2, 2009, which means that his statutory window extended back to May 1, 2009. In his amended charge, Moore contends that he was medically released to return to work in or around May 2006, but HACLA did not allow him to do so. Accordingly, in or around May 2006, Moore knew or should have known that HACLA was not allowing him to return to work and the limitations period began to run at that time. Moore did not file the instant charge until nearly three years later. Therefore, Moore's retaliation charge is untimely and this allegation is dismissed.

Additionally, Moore alleges that HACLA violated a variety of state and federal statutory schemes including the Fair Employment and Housing Act (FEHA), Title VII of the Civil Rights Act of 1964 (Title VII), the Americans With Disabilities Act (ADA), the Age

² When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608.)

Discrimination in Employment Act, worker's compensation laws and whistleblower protection laws. Moore also alleges that HACLA violated his rights under both the United States and the California Constitutions. PERB has previously found that it lacks jurisdiction over each of these claims. (*State of California (Department of Personnel Administration)* (2009) PERB Decision No. 2085-S [California Constitution]; *Alvord Educator's Association (Bussman)* (2009) PERB Decision No. 2046 [ADA, U.S. Constitution, whistleblower protection laws]; *San Mateo County Community College District* (2008) PERB Decision No. 1980 [Title VII]; *Trustees of the California State University* (2005) PERB Decision No. 1741-H [FEHA]; *California State Employees Association (Carrillo)* (1997) Perb Decision No. 1199-S [age discrimination]; *State of California (Franchise Tax Board)* (1992) PERB Decision No. 954-S [worker's compensation laws].) Therefore, PERB lacks jurisdiction to address these issues in Moore's unfair practice charge.

Interference

Moore contends that in "late 2009," HACLA prevented him from receiving union representation because HACLA asserted that Moore was not a permanent employee and therefore not a member of the bargaining unit represented by the union. The test for whether a respondent has interfered with the rights of employees under the MMBA does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. The courts have described the standard as follows:

All [a charging party] must prove to establish an interference violation of section 3506 is: (1) That employees were engaged in protected activity; (2) that the employer engaged in conduct which tends to interfere with, restrain or coerce employees in the exercise of those activities, and (3) that employer's conduct was not justified by legitimate business reasons.

(*Public Employees Association of Tulare County, Inc. v. Board of Supervisors of Tulare County* (1985) 167 Cal.App.3d 797, 807.)

In essence, Moore argues that HACLA denied him access to union representation because the agency does not include temporary employees in the bargaining unit. Further, there are no facts indicating that, in his capacity as an employee of HACLA, Moore requested union assistance to enable him to return to work and that HACLA was aware of his request. Therefore, Moore has not established a prima facie case of interference and this allegation is also dismissed.

ORDER

The unfair practice charge in Case No. LA-CE-572-M is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chair Dowdin Calvillo and Member McKeag joined in this Decision.